



Freshfields Bruckhaus Deringer US LLP

TIMOTHY P. HARKNESS

601 Lexington Avenue
31st Floor
New York, NY 10022
Tel +1 212 230 4610
Fax +1 646 465 7410
timothy.harkness@freshfields.com

December 21, 2012

VIA ECF

Chief Judge Gary L. Sharpe
James T. Foley - U.S. Courthouse
445 Broadway, Room 441
Albany, NY 12207

**Re: *Jacoby et al v. Blitz USA, Inc.* (Case No. 1:11mc50, underlying Case No.:
1:10-cv-3075, District of Oregon)**

Dear Judge Sharpe:

We represent non-party Kinderhook Industries, LLC in the above captioned matter and write in response to your text only order issued October 4, 2012.

On May 31, 2011, plaintiff Robert Jacoby served a Subpoena to Testify on non-party Kinderhook Industries, LLC with respect to *Jacoby et al v. Blitz USA, Inc.*, Case No.: 1:10-cv-3075, United States District Court for the District of Oregon ("the Underlying Case"). On June 17, 2011, Kinderhook Industries, LLC filed a Motion to Quash in this Court. [See Dkt. No. 1.]

Decision on the Motion was initially deferred due to court-ordered mediation taking place in the Underlying Case. [See Dkt. Entry dated October 18, 2011.] Decision of the Motion is currently stayed pending resolution of bankruptcy proceedings that were commenced by the defendant in the Underlying Case, Blitz U.S.A., Inc., in the United States Bankruptcy Court for the District of Delaware in November 2011 (the "Bankruptcy Proceedings"). [See Dkt. Nos. 11, 12.] On October 22, 2011, following the Notice of Suggestion of Bankruptcy filed by Blitz U.S.A. in the Underlying Case and Automatic Stay of Proceedings, Magistrate Judge Mark D. Clarke ordered that all pending deadlines and hearings in the Underlying Case be terminated pending the stay of the case and the outcome of Bankruptcy Proceedings. [See Docket of the

The Freshfields Bruckhaus Deringer US LLP partners include members of the Bars of the State of New York and the District of Columbia, Solicitors of the Supreme Court of England and Wales and Rechtsanwälte of Germany

Abu Dhabi Amsterdam Bahrain Barcelona Beijing Berlin Brussels Cologne Dubai Düsseldorf Frankfurt am Main
Hamburg Hanoi Ho Chi Minh City Hong Kong London Madrid Milan Moscow Munich New York Paris Rome
Shanghai Tokyo Vienna Washington

Underlying Case, Dkt. No. 124.] This order remains in place. [See Docket of the Underlying Case.]

On October 4, 2012, this Court requested that the parties file a status report regarding the status of the Bankruptcy Proceedings. [See Dkt. Entry dated October 4, 2012.] As of December 20, 2012, Blitz U.S.A., Inc. remains in Chapter 11 proceedings and the United States Bankruptcy Court for the District of Delaware has not granted relief from the automatic stay in the Underlying Case. Kinderhook Industries, LLC will file a new status report on May 21, 2012 or in the event of a change in status with respect to the Bankruptcy Proceedings or the Underlying Case.

Because the status of the Bankruptcy Proceedings and Underlying Case currently remain unchanged, we respectfully request that Kinderhook Industries, LLC's Motion to Quash remain stayed unless and until a decision on such is required.

Respectfully,



Timothy P. Harkness

cc: Thomas N. Peterson, Esq. (via US Mail)
Diane Breneman, Esq. (via US Mail)
John Tippit, Esq. (via US Mail)

(encl.)